IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.5583 OF 2006

Uttam Shankar Jagdale & Anr. ...Petitioner

Versus

Yallapa Dadu Mulik ...Respondent

Shri J.P.Kharge for the Petitioner.
Shri Uday Warunjikar for the Respondent.

CORAM : ABHAY S.OKA, J.
DATED : APRIL 12, 2007.

P.C.:

1. Heard Advocates appearing for the parties. The Petitioners are original Defendants in a suit filed by the Respondent. The Petitioners could not file written statement in time and therefore, an application was made at Exhibit 58 by the Petitioners praying that order passed by the trial Court to proceed with the suit without written statement be set aside and written statement be taken on record. An affidavit in support of the said application was filed by the said Petitioners. By the order impugned dated 07th April, 2006 the said Application at Exhibit 58 has been rejected by the trial Court.

2. The learned Advocate for the Petitioners pointed

out that sufficient reasons were set out in the application for not filing the written statement earlier. He submitted that the trial Court failed to appreciate that the provisions of Rule 1 of Order VIII of the Code of Civil Procedure, 1908 have been held to be directory. The Petition is opposed by the Advocate appearing for the Respondent by filing affidavit in reply.

3. I have considered the submissions made by the Advocates appearing for the parties. In the application and in the affidavit in support it is disclosed that the Petitioners are illiterate and poor persons. It is stated that they were not aware that written statement is required to be filed in marathi language. The Petitioners appear to be small agriculturists. In my view, a case was made out for setting aside the order to proceed with the suit without written statement. The Petitioners have paid costs in the sum of Rs.5,000/- to the Respondent by handing over the said amount in cash to the Advocate for the Respondent and the Advocate for the Respondent has acknowledged the receipt of the said amount. The prejudice which may be caused to the Respondent will be sufficiently compensated by payment

of aforesaid amount by way of costs.

4. The Petitioners have filed an undertaking dated 22nd February, 2007 in this Court stating therein that they will not apply for recalling the witnesses who are already examined. The undertaking is accepted.

4. Hence, Writ Petition is disposed of by passing following order:

(i) The impugned order is quashed and set aside and application made by the Petitioners at Exhibit 58 is hereby allowed.

(ii) The trial Court will take the written statement of the Petitioners on record and will proceed further with the hearing of the suit.

(iii) All contentions of the parties on merits of the suit are kept open.

JUDGE